

“Answers” to Estates and Future Interests Problems in the Book
and Some More Problems

Remember, I will not hold you to a knowledge of the common-law destructibility rule, though the answers to some of these problems depend on it.

p. S202; (a) = Answer with the presumption statute; (b) = Answer without the presumption statute:

1. (a) *A* -- fee simple absolute
(b) *A* -- present life estate
G -- reversion in fee simple
2. (a) *A* -- fee simple absolute
(b) *A* -- fee simple absolute
3. (a) *A* -- present life estate
(b) *G* -- reversion

(b) Same as (a)
4. (a) *A* -- fee simple absolute
(b) *A* -- fee simple absolute
5. (a) *A* -- present life estate
D -- reversion (which passes to his heirs or residuary devisees)

(b) Same as (a)

p. S204 (Problems 6 and 7)

South Carolina (and 2 others):

- (a) Assuming that *A* never had any issue, the fee reverts to the heirs or devisees of *D* (6) or passes to *B* (7).
- (b) *A*'s heirs or devisees take a fee simple absolute.
- (c) *C* gets a fee simple absolute.
- (d) *C* gets a conditional fee, conditioned upon *A*'s having issue. The estate will revert to *D*'s heir or devisees (6) or pass to *B* (7), if *A* dies without having issue.

Del., Me., Mass., R.I. (for deeds):

- (a) The land reverts to the heirs or devisees of *D* (6) or passes to *B* (7).
- (b) The issue take a fee tail limited to the heirs of *A*'s body.

- (c) and (d) *C* takes a f.s.a.

Conn., Ohio, R.I. (for wills):

- (a) The land reverts to the heirs or devisees of *D*.
- (b) The issue take a f.s.a.
- (c) and (d) *C* takes a fee tail limited to the heirs of *A*'s body (in effect, but not in form, an estate *pur autre vie*). (Conn. and Ohio have cases so holding; R.I. allows *C* to take a fee simple.)

Six States:

- (a) The land reverts to the heirs or devisees of *D* (6) or passes to *B* (7).
- (b) *A*'s issue take a f.s.a.
- (c) *C* has an estate *pur autre vie*; *A*'s issue a contingent remainder in fee. (Contingent and on there being issue (d) and on their surviving *A* (c and d).)
- (d)

Twenty-five states (f.s.a. half):

- (a) and (b) *A*'s heirs or devisees take a f.s.a.
- (c) and (d) *C* takes a f.s.a.

Twenty-five states (executory interest half):

- (a) *A*'s heirs or devisees take a f.s.a. (6); *B* takes a f.s.a. by way of executory interest (7).
- (b) *A*'s heirs or devisees take a f.s.a.
- (c) *C* takes a fee simple absolute (6); *C* takes a fee simple subject to an executory interest that will fall in if *A* dies without surviving issue (7).
- (d)

p. S205:

- 8. *A* -- present fee simple determinable
G -- possibility of reverter
B -- nothing or a possibility of reverter depending on whether the court follows what seems to be the English rule or what seems to be the American rule

9. A -- present fee simple on a condition subsequent
G's heirs (after his/her death) -- right of entry or nothing depending on whether the court follows the rule that an attempt to convey a right of entry destroys it
B -- nothing
10. A -- present fee simple determinable (preferable on the language) or fee simple on a condition subsequent if the court indulges in the presumption of *Storke*. If it's a f.s.d. results are the same as (8). If it's a fee on a condition subsequent, neither G nor B has anything because a right of entry was not specifically retained, and A has a fee simple absolute.

p. S213: [NOTE: We did not do Problems 11 and 14 in class, and you will not be held to the doctrines that underly them.]

11. Upon D's death A has a present estate in fee tail male. D has a reversion which passes, unless otherwise disposed of, to A as D's sole heir. A's conveyance to B is of what A has got, in effect, a present estate for A's life and a reversion upon the expiration of A's direct male descendants. A's male issue have no interest. The words "and the heirs male of his body" are words of limitation, nor words of purchase. Merger does not take place where the holder of the estate in fee tail acquires the reversion or the remainder in fee (p. 410 n.2). Note that although B has "in effect" an estate *pur autre vie* (when A dies the right to possession will pass to A's male descendants, if any), it is not called an *estate pur autre vie*, but a fee tail. This may make a difference if B commits waste (*see* DKM3, p. 404), and it would allow B to dock the ential by suffering a common recovery.

12 and 13. [Note: This assumes "surviving" means surviving A.]

- (a) (12) A -- present life estate
B's children -- contingent remainder in fee simple
G -- reversion
- (a) (13) A -- present life estate
B's children -- contingent remainder in fee simple
G -- reversion
- (b) (12) A -- present life estate
D -- vested remainder in fee simple subject to open
- (b) (13) A -- present life estate
C -- contingent remainder in fee simple
D -- nothing
G -- reversion
- (c) (12) A -- present life estate
G -- reversion in fee simple absolute

- (c) (13) A -- present life estate
G -- reversion in fee simple absolute
- (d) (12) A -- present life estate
D -- vested remainder in fee simple
- (d) (13) A -- present life estate
C -- contingent remainder in fee simple
D -- nothing
G -- reversion
- (e) (12) G -- fee simple absolute
- (e) (13) G -- fee simple absolute

NOTE: Under modern law abolishing the destructibility of contingent remainders, there will be a reversion in *G* subject to a springing executory interest in *B*'s children if he has any.

- (f) (12) D -- fee simple absolute
- (f) (13) D -- fee simple absolute

NOTE: At common law the class closes upon the death of *A* without regard to the donor's intent. The same result follows under modern law, but as a matter of interpretation rather than a matter of law. It is assumed that *G* would not have wanted to keep the title in abeyance if there is or are one or more members of the class who can take immediately upon the death of the life tenant. If there is no member of the class, as in variation (e), then, under modern law, the class is held open until *B*'s death. Both results under modern law can be reversed by appropriate language.

- 14. (a) A -- present possessory life estate
A's children -- contingent remainder in fee
A -- reversion following the contingent remainder

NOTE: Merger does not take place when *A* acquires the life estate and the reversion at the same time.

- (b) A -- fee simple absolute

p. S224

15 and 16.

- (a) (15) A -- present fee simple absolute

- (a) (16) A -- present fee simple absolute
- (b) (15) A -- present fee simple absolute
- (b) (16) A -- present life estate
C -- vested remainder in fee simple subject to open and subject to being divested
B's heirs -- shifting executory interest in fee simple
A -- reversion
- (c) (15) G -- present fee simple absolute
- (c) (16) G -- present fee simple subject to an executory interest
B's heirs -- springing executory interest in fee simple
- (d) (15) A -- present life estate
C -- vested remainder in fee simple subject to open
- (d) (16) A -- present life estate
C and D -- vested remainder in fee simple subject to open

NOTE: Under the modern statutory presumption they would almost certainly take as tenants in common. Even at common law the presumption of joint tenancy was not always applied to class gifts.

- (e) (15) B's heirs -- present fee simple absolute
- (e) (16) C -- present fee simple subject to an executory interest
B's heirs -- shifting executory interest in fee simple
- (f) (15) C -- present fee simple absolute
- (f) (16) C and D -- present fee simple absolute

NOTE: See the note under (d)(16).

p. S232 [NOTE: We did not do Problem 17 in class, and you will not be held to the doctrines that underly it.]

- 17. A -- present life estate
B -- vested remainder for life
A -- reversion

NOTE: D's heirs took by inheritance not by devise.

p. S237 (Assume that A is a woman and B a man. Before the conveyance to E, the parties have:)

18. *A* -- present life estate
B -- remainder in fee simple absolute
C -- an estate *iure uxoris*
D -- nothing

NOTE: There is no dower or curtesy because *A*'s estate is not one which the issue of the marriage might inherit and *B* is not seised of the land. The conveyance to *E* is good, if *C* consents. A Married Woman's Property Act would eliminate the possibility of an estate *iure uxoris* (and hence the necessity for consent), but would otherwise leave the situation unchanged.

p. S240

19. *D* -- tenant in common of 1/3 in fee simple
B -- joint tenant with *C* of 2/3 in fee
C -- joint tenant with *B* of 2/3 in fee
E -- nothing

NOTE: The problem does not mention any statute reversing the common-law presumption of joint tenancy. Under the modern statutory presumption *A*, *B*, and *C* would almost certainly take as tenants in common. If it were a tenancy in common and dower was still in effect, *E* would be able to claim dower in the property, as she would not if it were a joint tenancy.

20. *A* and *B* -- tenants by the entirety
C -- has the right to the rents and profits during *A* and *B*'s joint lives and possibly *A*'s survivorship rights
D -- nothing

p. S260

(1) The life estate in the class of *G*'s children is good. *G* is not going to have any children after he's dead. The remainder in the grandchildren is void. *G* could have a child after the date of this grant which child could have a child long after all lives in being have expired. Since one member of the class could become a class member after the perpetuities period, the entire gift to the class is void under the "all or nothing" rule.

(2) The life estate in the class of *D*'s children is good. The remainder in the grandchildren is void. The problem here is not that a potential member of the class could be born after the perpetuities period. All of *D*'s children are lives in being on the day of *D*'s death. The problem is the 25 year period in gross. The youngest, indeed several of the grandchildren, could reach the age of 25 more than 21 years after the death of all of *D*'s children. Since one member of the class could become a class member after the perpetuities period, the entire gift to the class is

void under the “all or nothing rule.”

(3) The life estates in *B* and that in her children are good. *B* cannot have any children after her death, and she is a “life in being.” The remainder in the grandchildren is void. The law presumes that any person of whatever age, sex or physical condition is capable of having children. Hence *B* could have a child after the effective date of the grant, which child could have a child more than twenty-one years after *B* and all the living children and grandchildren of *B* are dead. Since one member of the class could become a class member after the perpetuities period, the entire gift to the class is void under the “all or nothing” rule.

(4) The life estate in *B* and his widow are good. *B*’s widow will be identified at the time of *B*’s death, and *B* is a life in being. But *B*’s widow is not necessarily a life in being at the effective date of the grant. *B*’s current wife could die, and *B* could marry a woman who is born after the effective date of the devise. Hence the widow’s life may not be used as a measuring life for determining eligibility for membership in the class of remaindermen. Despite the fact that *B*’s children will all be lives in being at *B*’s death, there is no guarantee that they will fulfill or fail to fulfill the other condition for membership in the class (survival of both *B* and his widow) within twenty-one years of *B*’s death. The whole remainder interest is therefore void.

(5) The lineal descendants of *A* alive at the date of his death are the measuring lives, but one of these descendants could have a child after *A*’s death, which child could survive until the probate of *A*’s will, while none of the other descendants alive at *A*’s death so survive. The will may not be probated within twenty-one years after the death of every lineal descendant of *A* alive at his death (it ought to be, but the Rule Against Perpetuities, unlike equity, does not treat as done what ought to be done). Therefore since the membership in the class is to be determined by an event which may take place more than twenty-one years after the death of any life in being at the effective date of the instrument, the gift fails.

(6) The remainder in *B*’s grandchildren is void. The problem is not those members of the class who are alive at the death of the testator; they will reach 21 or fail to reach 21 within 21 years of his death. Nor is the problem those grandchildren of *B* born within 5 years of the testator’s death of children of *B* who are alive at the testator’s death. They will reach 21 or fail to reach 21 within 21 years of the death of lives in being (the children of *B* alive at the testator’s death). The problem is those grandchildren of *B* born within five years of the testator’s death of children of *B* who are not alive at the testator’s death. Such grandchildren could qualify or fail to qualify for membership in the class more than 21 years after the expiration of all lives in being at the testator’s death. The fact that in order for this to happen a child of *B* would have to have a child before he was 5 years of age is irrelevant in the wonderful world of perpetuities where all people can have children at any age. Because a member of the class could qualify for class membership beyond the perpetuities period, the entire gift to the class is invalidated.

(7) This case is a joke. It is designed to illustrate that in a world in which there are sperm banks, it is no longer possible to say that all of a man’s children must be conceived by the time of his

death. Hence, the simple and quite common devise in the example could be invalidated if (1) *B* were a man and (2) a court were prepared to hold that the availability of sperm banks makes it possible that a child of *B* could be conceived after his death. With the even more recent invention of egg banks, this “fantastic” possibility is now open to women as well.

(8) This case is not a joke, but no court has ever ruled on the situation presented. Because many of the “fantastic possibilities” which lead to invalidation of interests under the Rule are dependent on the presumption of fertility, a number of legislatures have passed statutes overruling the presumption. At the same time legislatures and courts have been holding that adopted children should be treated as natural children in interpreting instruments, unless the contrary intent is expressed. The point is that if you reform the Rule in a piecemeal fashion like this, you are likely to end up with no reform at all. Although *B* is by statute no longer presumed to be capable of having children at age 80, she certainly could adopt one, and if you take a what-might-happen approach to the Rule, the remainder is still invalid as it was in (3).

There follows an objective examination which I gave many years ago on estates and future interests. It depends on the common law system largely unreformed, and I have already said that I will not test you on merger and destructibility, the fee tail and the Rule in Shelley's case. The exam does provide good practice on the common law system for those of you who want to practice. If you wish, I will go over the answers (which are included after the questions) at a Question and Answer Session. In 2017, a student in the class answered the questions using the assumptions that we will be using for this year's exam and gave her reasons for the answers. I checked them and added some comments particularly about the reasons. The document may be found at <http://www.law.harvard.edu/faculty/cdonahue/courses/prop/assign/Objective%20Test%201969%20-%20under%20modern%20assumptions.pdf>.

December 16, 1969

Student Number _____

Property, Section 3
(Prof. Donahue)
Part I

DO NOT REMOVE THIS PAPER FROM THE ROOM

First write your student number in the space above. The suggested time for this part of the examination is thirty-five minutes. The papers will be collected after 90 minutes. Be sure to save enough time for Parts II and III.

This Part of the examination consists of objective, multiple choice questions. Your answers are to be indicated on these pages. After each statement of facts are one or more propositions, each of which ends by presenting a series of alternatives. You are to choose the correct alternatives and indicate your choices by underlining them. In some instances more than one alternative is correct, in which case you should underline more than one answer to each question. Do not mark more than those alternatives which you think are correct for each question, for incorrect answers will be counted against you.

Throughout this Part you are to assume that O has, at the time of the conveyance or devise, a fee simple absolute in certain land, and that the conveyance or devise in each problem adequately describes the land. You should also assume that the Anglo-American common law is in force, including the so-called common law statutes such as Quia Emptores, De Donis, the Statute of Uses, and the Statute of Frauds. You should further assume that a Statute of Wills is in force. All conveyances or devises referred to in the fact situations below may be assumed to operate so as to allow the creation of executory interests without the specific declaration of a use; for example, as a bargain and sale in the case of inter vivos conveyances, or as a devise operating under the Statute of Wills. You should assume that in any conveyance or devise, a fee simple absolute is conveyed unless the language describes a lesser estate. Unless otherwise stated, all persons named in grants are living and no conditions have been fulfilled.

O conveys land “to *A* for life, remainder to *B*, *C*, and *D*.” *B*, *C*, and *D* are *A*’s heirs apparent at law.

1. *A* has: (a) a life estate (b) a fee simple absolute (c) a fee tail (d) none of the above.
2. *B*, *C*, and *D* have: (a) a vested remainder in fee simple (b) a contingent remainder in fee simple (c) nothing (d) none of the above.
3. *O* has: (a) a reversion (b) a possibility of reverter (c) a right of entry (d) none of the above.

After the preceding conveyance, *A*, a widower, dies suddenly at the age of 91, devising the land “to my mistress, *E*, for life, remainder to *B*, *C*, and *D*.”

4. *B*, *C*, and *D* have: (a) a vested remainder in fee simple (b) a vested remainder in fee tail (c) a contingent remainder (d) none of the above.
5. *B*, *C*, and *D* are or will be: (a) joint tenants (b) coparceners (c) tenants in common (d) tenants by the entirety (e) you can’t tell.
6. *E* has: (a) a life estate (b) dower rights (c) nothing (d) none of the above.
7. This problem involves the application of: (a) the Rule in Shelley’s Case (b) the Statute of Uses (c) the Statute De Donis (d) the Doctrine of Worthier Title (e) none of the above.

O conveys land “to *A* for life remainder to *A*’s 21 year old children but if *A* has no 21 year old children at his death, then to *C* and his heirs.” *A* has three children *D*, *E*, and *F*, none of whom is 21.

8. *D*, *E*, and *F* have: (a) a vested remainder subject to open (b) an executory interest (c) a contingent remainder (d) a vested remainder subject to complete defeasance (e) nothing (f) none of the above.
9. *C* has: (a) a vested remainder for life (b) a contingent remainder in fee (c) an executory interest (d) nothing (e) none of the above.
10. *C*’s heirs have: (a) a contingent remainder in fee (b) an executory interest (c) nothing (d) none of the above.
11. *O* has: (a) a remainder (b) a reversion (c) a possibility of

reverter (d) nothing (e) none of the above.

O grants land “to *A* for life, remainder to my heirs.”

12. *O*'s heirs take: (a) a remainder by descent because it is “worthier” to take an interest by descent (b) no interest at all because the remainder merges with *O*'s reversion (c) a freehold interest (d) none of the above.

O conveys land “to *A* and his heirs. If, however, the land is used for other than agricultural purposes, the land shall go to *B* and his heirs.”

13. *A* has: (a) a fee simple determinable (b) a fee simple absolute (c) a fee simple subject to a right of entry (d) none of the above.
14. *B* has: (a) a right of entry (b) a reversion (c) an executory interest (d) a possibility of reverter (e) nothing.
15. *O* has: (a) a right of entry (b) a reversion (c) an executory interest (d) a possibility of reverter (e) nothing.

O conveys land “to *H* and *W*, as husband and wife, and their heirs.”

13. *H* and *W* have: (a) estates for life (b) a fee simple (c) an estate as joint tenants (d) an estate by the entirety.

After the preceding conveyance, *H* conveys his entire interest in the land to *X* and then dies the next day.

17. *X*: (a) is a tenant in common (b) is a joint tenant (c) is sole owner in fee simple (d) has nothing.

O conveys land “to *A* for life, remainder one day after *A*'s death to the first son of *A* living at the time of this grant to attain a college degree for life, remainder to *E*.” *A* has three sons at the time of the grant *B*, *C*, and *D*.

18. *B*, *C*, and *D* have: (a) a vested remainder (b) a contingent remainder (c) an executory interest (d) nothing (e) none of the above.
19. *O* has: (a) a reversion (b) a possibility of reverter (c) a right of entry (d) nothing (e) none of the above.

20. *A* has: (a) a life estate (b) a fee simple absolute (c) a base or qualified fee (d) a fee simple subject to an executory limitation (e) none of the above.

A and *E* now convey all their right title and interest in the land to *C*. *B* attains a college degree, the first of the three brothers to do so. *A* dies. What is the state of the title two days after *A*'s death?

21. *O* has: (a) a reversion (b) a possibility of reverter (c) a right of entry (d) nothing (e) none of the above.
22. *B* has: (a) a life estate (b) a fee simple absolute (c) a base or qualified fee (d) a fee simple subject to an executory limitation (e) none of the above.
23. *D* has: (a) a vested remainder (b) a contingent remainder (c) an executory interest (d) nothing (e) none of the above.

Answers

1. a
2. a Remember the Rule in Shelley's Case only applies if the words "A's heirs" are used in the instrument.
3. d
4. d They have a present estate in fee simple.
5. a common law presumption
6. c
7. e This question bothered people. The thought pattern I was looking for was "You don't apply the Rule in Shelley's Case unless there is a remainder limited to the heirs of the life tenant.
8. c
9. b
10. c
11. b

12. d *O*'s heirs take no interest at all. *O* has a reversion by the Doctrine of Worthier Title.
13. b I also gave credit for (d). What *A* has is a fee simple subject to an executory interest, but the interest is void because it violates the Rule against Perpetuities.
14. e
15. e
16. b
and
d
17. d
18. c It must be because it cuts off *O*'s one day reversion.
19. a
20. a [Query 1: What does *E* have? A1: The logic (though the authorities aren't clear) suggests that it must be an executory interest, since it will follow a gap in seisin. Query 2: Is the contingent interest in *B*, *C* and *D* good? A2: Yes, because they are living persons at the time of the grant.]
21. d
22. a
23. d

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